

No. 11(112)-80-3 Lab./8714.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Indian Core Oils, Plot No. 53, Sector-6, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 92 of 1978

between

SHRI ANIL KUMAR, WORKMAN AND THE MANAGEMENT OF M/S. INDIAN CORE OILS, PLOT NO. 53, SECTOR-6, FARIDABAD.

Present :—

Shri Bhim Singh Yadav, for the workman.

Shri R. C. Sharma, for the management.

AWARD

1. By order No. ID/FD/6M-78/16862, dated the 3rd May, 1978, the Governor of Haryana referred the following disputes between the management of M/s. Indian Core Oils Plot, No. 53, Sector-6, Faridabad and its workman Shri Anil Kumar, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Anil Kumar was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 10th August, 1978 :—

1. Whether the workman was employed on a casual contract basis ? If so, to what effect ?
2. Whether the management is covered under the Shops and Commercial Establishment Act ? If so, to what effect ?
3. Whether the workman has left the services of his own accord and has received all his dues in full and final settlement ?
4. Whether the workman is gainfully employed ? If so, since when and at what wage and to what effect ?
5. Whether the termination of services of the workman concerned was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management. The management examined Shri Sat Pal partner as WW-1 Shri Girraj Sharma as WW-2 and closed their case. Then the case was fixed for the evidence of the workman. The workman examined Shri Sat Pal Singh as WW-1, Shri Bal Ram as WW-2, Shri Shiv Kumar as WW-3 and himself as WW-4 and closed his case. Then the case was fixed for Arguments. Arguments were heard.

3. The facts of the case are that the workman was employed with the management as helper at Rs. 170/ p. m. According to the workman he was employed with effect from 1st April, 1977 while according to the management it was 1st August, 1977. In the claim statement the workman stated that he was not allowed his duty with effect from 3rd December, 1977, without assigning any reason or show cause notice and thus his services were terminated. While the case of the management was that he was a casual worker and stopped attending the factory with effect from 1st December, 1977. The management never asked him to leave the service. Now I give my findings issueswise :—

Issue No. 1.—WW-1 Shri Sat Pal produced Exhibit M-1 to -M4 the attendance cards of the workman for the months of August, 1977 to November 1977. He also produced Exhibit W-5 to Exhibit M-7 vouchers pertaining to the workman. According to him the workman absented himself from duty in the end on November, 1977. In cross-examination he stated that they did not issue appointment letter while appointing workman. He also stated that Exhibit M-1 to -M4 were neither signed by the workman, nor by the management. He further stated that the workman worked in the factory only for about three months. WW-2 Shri Girraj Sharma Foreman stated that the workman left the job in the factory because he got employment somewhere else. He also stated that the workman worked in the factory for about 7-8 months. In cross-examination the witness stated that he himself was working in the factory for about four years. He was on piece rate basis and no increment was given to him.

4. The workman examined himself as WW-4 and stated that he joined the factory on 1st April, 1977, as a helper and he was removed from service on 3rd December, 1977. No notice was given to him by the management for terminating his services. He sent letter Exhibit W-1 by post but the management did not reply. Then he gave the demand notice. There is no mention of the fact in the statement of witness produced on behalf of the management that the workman was a casual contract worker. My attention was drawn by the representative for the workman to Exhibit M-1 to M-4 the attendance cards. Their case is that the workman joined services with effect from 1st August, 1977, which was a Sunday. MW-1 admitted in cross-examination that Exhibit M-1 to M-4 did not bear the signatures of the workman or the management. Back of the attendance cards contains wages slip having column wages period, rate of wages salary, amount of wages etc. and underneath the line is printed "signature of workers". The signature of the workman does not appear on any of the card. On these cards designation of the workman is shown "casual/contract". In the absence of signatures of the workman there is no authenticity of these documents. The representative for the workman argued that the management did not produce deliberately the records pertaining to the workman. Because it is hardly to believe that the workman joined service on Sunday, i.e., 1st August, 1977 and left the job on the last date of the month i.e. 30th November, 1977, which is according to the attendance cards. Therefore, the management has failed to prove the burden of issue number 1 which is decided accordingly.

Issue No. 2.—The management produced registration certificate number F/74/163, dated 23rd October, 1974, under the Punjab Shops and Commercial Establishment Act. As regards its effect on the present proceedings, the representative for the management has laid great stress that the Industrial Disputes Act was not applicable to the present case, because it was registered under the Punjab Shops and Commercial Establishment Act. He cited 1977 Lab. I. C. page 1572 and argued that where Shops and Commercial Establishment Act applies, Industrial Disputes Act was not applicable. I have gone through the ruling and find that this is a case under the Andhra Pradesh Shops and Establishment Act, 1966. In para 8 of the ruling definition of "Commercial Establishment", "Employee", "Establishment" and "Shop" are given. These definitions are different from the definition given in the Punjab Shops and Commercial Establishment Act, 1958. Section 40 of the Andhra Act has been discussed in para 10 of the ruling regarding termination and dismissal of the services of a workman on the ground of misconduct or otherwise. Rules 19 and 20 of the Act provide forum and procedure to be followed for challenging of an or dismissal the discharge employee. The expression termination used in section 40 of the Act is synonymous of the expression "Discharge" used in section 2(A) and item number 3 of the second schedule of the Industrial Disputes Act and likewise "termination for misconduct" contemplated by the Act appears to be synonymous with dismissal contemplated by the Industrial Disputes Act.

5. In Punjab Shops and Commercial Establishment Act the provisions for dismissal or termination as discussed above have not been provided. There are only section 22 and 23 which provide notice of removal, that no employee shall be removed from service unless one month's notice pay etc. and in contravention the employee could file a complaint before a Magistrate. The Punjab Shops and Commercial Establishment Act is "An Act to provide for the regulation of conditions of work and employment in Shops and Commercial Establishments" whereas Industrial Disputes Act is "An Act to make provision for the investigation and settlement of Industrial Disputes and for certain other purposes" as given in the preambles of the two Acts. I find no conflict in the provisions of the Punjab Shops and Commercial Establishment Act and the Industrial Disputes Act. The proper forum for the concerned workman is only authorities mentioned in the Industrial Disputes Act. Therefore, there is no effect of the registration of this concern under the Punjab Shops and Commercial Establishment Act. This issue is decided against the management.

Issue No. 3.—MW-1 stated that the workman absented himself from 31st of December, 1977. He came to the factory on the 7th of next month to collect his dues. He also stated that the workman reported to the Labour Officer regarding non-payment of his dues and that some clerk from the Labour Office came to him and the money was paid to that clerk. After some time the clerk returned the money with the application as the workman had not come. Thereafter the workman came to the factory in the month of April and then he collected his salary,—vide Exhibit M-9, in full and final settlement of his account. He stated that Exhibit M-9 did not bear the signature of any factory officer but bears the signature of the Foreman. The Foreman MW-2 stated that the workman came to the factory to collect his dues on 8th of April and was paid only Rs. 200. In cross-examination he stated that the workman had come to collect his dues after 5-00 p.m. The cashier made payment to the workman,—vide Exhibit M-9. The workman produced Shri Bal Ram, clerk of the Labour Inspector, regarding payment to the workman by him. He stated that the workman did not receive that payment and the same was returned to the management. I have seen voucher Exhibit M-9 which mentions two amounts, Rs. 120 against the work done in November, 1977 and Rs. 80 against factory labour account, total Rs. 200. There is writing "To ex-gratia payment in settlement of dispute for reinstatement and also in full and final settlement of all claims of Anil Kumar". The space meant for signature of the Accountant and partner is blank. According to these vouchers and statement of MW-1 this amount is of wages of the workman for the month of November, 1977 and the words full and final settlement seems were appended afterwards. There is no voucher shown for the month of December, 1977 and full settlement should have been reached only after the payment for that month. The workman concerned in his statement stated that he had made a complaint to the Labour Officer regarding non-payment of wages. He also stated that the wages

were being paid on register while over time was paid on vouchers. The signatures were obtained on blank vouchers for over time. His services were terminated on the ground that he was demanding over time at double the rate of wages, while the management was paying at single rate. There is no explanation of the voucher and money kept by the clerk of the Labour Office. It is a doubtful transaction. On the evidence discussed above, I find that the management has failed to prove this issue. Therefore, this issue is decided against the management.

Issue No. 4.—On this issue the management produced Exhibit M-10 and M-11 stating that Shri Anil Kumar was a casual worker in the month of December, 1977, in M/s Rita Industries and from 7th April, 1977 to 9th August, 1977, as a trainee wireman in Eastern Electronics. There is no mention of the amount of wages paid to him in the two documents. The workman produced Shri Sat Pal Singh whose signatures are alleged on Exhibit M-10 but he stated that he had no concern at all with M/s Rita Industries. The workman produced Shri Shiv Kumar, Head Clerk of the office of the Labour Officer-cum-Conciliation Officer, Faridabad, as WW-3 who stated that Shri Sat Paul signed on settlement and notice on behalf of M/s. Rita Industries. The workman confronted MW-1 on the point of certificate of employment Exhibit M-10 and M-11 which MW-1 stated that he could not produce or get produced the record in connection with Exhibit M-10 and MW-11. These documents do not inspire confidence and I hold this issue against the management.

Issue No. 5.—According to MW-1 the workman absented himself from service and the management never terminated his service, while the workman stated that his services were terminated because he demanded overtime allowance at double the rate of wages. It is an admitted fact that no notice or charge-sheet was ever issued to the workman nor any retrenchment compensation was paid to him.

6. On the conclusion of the above discussions, I find the present case of retrenchment as defined in the Industrial Disputes Act and hold that the termination of services of the workman was neither justified nor in order. While answering the reference, I give my award that the workman is entitled to reinstatement with continuity of service and full back wages. I order accordingly.

M. C. BHARDWAJ,

Dated 18th June, 1980.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 584, dated 26th June, 1980

Forwarded (four copies), to the Secretary, to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 5th June, 1980

No. 11(112)-80-3Lab./7593.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. Hindustan Vacuum Glass Ltd., N.I.T., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 81 of 1978

between

SHRI AYODHYA PARSAD, WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN
VACUUM GLASS LTD., N.I.T., FARIDABAD

Present—

Shri S.R. Gupta, for the workman.

Shri V.K. Dewan, for the management.

AWARD

1. By order No. ID/FD/632-77/4351, dated 6th April, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Hindustan Vacuum Glass Ltd., N.I.T., Faridabad and its workman Shri Ayodhya Parsad, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

“Whether the termination of services of Shri Ayodhya Parsad was justified and in order ? If not, to what relief is he entitled ?”

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 31st August, 1978 :—

1. Whether the workman abandoned his job of his own ?
2. Whether termination of services of the workman was justified and in order ?
3. Relief.

And the case was fixed for the evidence of the management. The management examined Shri Shanker Lal Gupta, Personnel Officer, as M.W. 1, Shri D.C. Singal, Incharge Time Office as M.W. 2 and closed their case. Then the case was fixed for the evidence of the workman. The workman examined Shri Dhan Jug as W.W. 1, Ram Avadh as W.W. 2, and himself as W.W. 3 and closed his case. Then the case was fixed for arguments. Arguments were heard. I now give my findings issues-wise :—

Issue No. 1.—M.W. 1 stated that the workman was their employee since December, 1971. He further stated that on 30th September, 1976 he reported for duty in the last shift commencing from odd hours. He left the factory at about 1.30 A.M. after punching the card for going out. He never reported for duty thereafter upto this time. Among other things he stated that neither any information, nor any leave application was received and for six months his name was kept on muster rolls. His name was discontinued after 31st March, 1977 according to clause 17 of the Standing Orders. He produced copy of the Certified Standing Orders, Exhibit M-1. In cross examination the witness stated that he had no personal knowledge about the death of some police official in a movement regarding sterilisation in September, 1976. He also stated that he had no knowledge whether some persons were arrested on account of that movement and Shri Som Nath, Machineman, Ram Adhar, Meller, and Nathu, helper were workmen of the factory. He further stated that nobody told him that four employees of the factory were arrested under section 302 of I.P.C. He also pleaded ignorance about the police visit in the factory and arrest of the concerned workman. He admitted that no enquiry was made for the reason of absence of the workman. He also admitted that the workman saw the General Manager for joining duty who told him that his name had been struck off the rolls from 1st April, 1977. He denied the suggestion that he had knowledge of arrest of the workman along with three-four other employees of the factory. He also denied the knowledge that the management had written 3-4 letter to the workman at his address of Gurgaon jail. M.W. 2 stated that he knew the workman who worked in the factory for five or six years. He further stated that according to attendance register the workman was present last on 30th September, 1976. Thereafter his absence is recorded upto 31st March, 1977. Thereafter his name was not continued. In cross examination he stated that the workman on 30th September, 1976 was in “A” Shift commencing from 00 hours to 8.00 A.M. but he left the factory at 1.30 A.M. on 30th September, 1976. He produced card Exhibit M-2. He further stated that neither any explanation, nor any charge-sheet was issued to the workman for his absence. He also denied the knowledge of killing of some police officer and arrest of the workman along with Shri Som Nath and Shri Ram Adhar. He denied his knowledge that the persons were in jail for a long time. He identified the signatures of the General Manager on Exhibit W-1 and W-2.

3. WW-1 stated that on 29th September, 1976 he was also arrested and he saw the concerned workman in the police station on 30th September, 1976. He stated that they were arrested in connection with killing of S.H.O. and they remained in judicial lock up for 11 months till they were bailed on 9th August 1977. In cross examination he stated that he knew the workman being living together since 1974-75. He further stated that relatives and children of the workman used to come to see him in judicial lock up. WW-2 stated that he was in the factory of the management since 1956 and left the services two years back. He knew the concerned workman who was also a worker of the factory. He was working in the factory along with the concerned workman when police came and arrested him. He further stated that Shri Babu Ram Incharge asked him whether he would work on the machine of this workman and that he worked on that machine. He further stated that Administrative Officer of the management knew that the police had taken the workman and had arrested him. In cross examination he stated that he was a Rickshaw puller these days and so was the concerned workman. He stated that he had left the services of the management of his own accord about two years back. He could not tell the year, month and date of the arrest of the workman. He stated that supervisor Shri Bhatia was present at the time of arrest of the workman by the police. The concerned workman as WW-3, stated that he was employee of the factory since 1969. He was arrested on 29th September, 1976 by the police from his duty in the factory at 1.00 A.M. in the night. He stated that he was released on bail on 9th August, 1977. He further stated that he had posted a letter to the management requesting to look after his family and to pay some amount for their support. He received letter, Exhibit W-1, from the management in jail. Carbon copy of it was W-1/A. The fact of his arrest was known to Shri Babu Lal, Incharge and

Supervisor Shri Bhatia. At the time of his arrest Shri Bhatia wanted the authority of some senior Officer and there upon Shri Ahuja, Engineer was contacted who allowed his arrest. He was told by the police that he was arrested by the police in the matter of murder of Shri Mehta the S.H.O. He further stated that he had sent the application to the management from jail. His wife had met the Officers of the company and had told them about his arrest. He produced a certified copy of the judgement, exhibit WW-3/A of the Additional Session Judge, Gurgaon, discharging him from the case. He stated that when he was bailed out the next day he had reported for duty to the management but Shri Garg, the General Manager refused to give him duty and therefore he raised the demand, copy Exhibit W-5. He produced, Exhibit W-6, W-7 and W-8. In cross examination he stated that at the time of his arrest he was working on machine number 3 and that he was called by the police at the factory gate and arrested there. He punched the card, Exhibit M-2 on the direction of the Security Officer before taking away by the police. He stated that he was handcuffed inside the factory and the card was punched thereafter. He had received replies of his letters from the management in jail. He had written letters Exhibit MX-1 and MW/2 to the management. Exhibit W-1 and W-2 were the replies thereto. He could not produce the third letter which was an inland letter and posted through the Superintendent of Jail. He could not tell as to whom his wife had met in the factory. He had not written any letter to the management telling that as to when he would be released from jail and be able to join his duty.

4. The representative for the management laid emphasis on rule 17 of the Certified Standing Orders which deals with leave and its procedure. Concluding para of this rule is as follows :—

“If the workman remains absent beyond the period of sanctioned leave and without intimation, he shall be deemed to have committed an act of misconduct and shall be treated as such. After six months absence, however, he shall be deemed to have abandoned his post”.

He argued that as the workman remained absent from 29th September, 1976 to 31st March, 1977 his name was not carried forward from 1st April, 1977 as per this rule. He was deemed to have abandoned his post. He also argued that there was no positive act from the management for termination of services of the workman and the action of the management is bona fide. He cited 1970 ILLJ page 26 that the Certified Standing Orders have statutory force. 1970 II LLJ page 550 in which it is held that the management was under no obligation to hold any enquiry in such case. He cited 1974 Indian Factories Journal page 183. This is a case where standing orders of the company provide for leave without pay for a maximum period of thirty days and also that a workman remaining absent beyond a period of sanctioned leave and not reporting for duty within ten days of the expiry of such leave shall lose lien on his employment and shall be deemed to have left services from the date he was due to return to work. It was held that the employer had the right to exercise bona fide power under the Standing Orders to treat the workman as having abandoned his services and refused to take him duty. He also cited 1979 LLN page 610. This is a case under section 10 (i) of the Industrial Disputes Act and has no bearing on the instant case. He also cited 1979 Indian Factories and Labour Reports page 329 and 1979 I LLJ page 211. In these rulings “Retrenchment” and scope of Sundaramoney’s case 1976 I LLJ page 478 have been discussed.

5. The representative for the workman referred to rule eleven of the Certified Standing Orders which deals with Absenteeism providing such breach as a mis-conduct and he argued that rule 17 was not applicable. He cited 1976 I LLJ page 478, 1977 I LLJ page 1, 1977 Labour and Industrial Cases (S.C.) 1695, AIR 1977 (S.C.) page 31, 1975 Labour and Industrial Cases page 1441, 1978 LLN II page 173, 1978 I LLJ page 460, 1979 I LLJ page 257, and lastly 1980 LLR page 73. The present dispute is similar to the case reported in 1978 I LLJ page 460 where an employee could not join his duties for the reason he was charged with a murder and kept in jail. Ultimately murder charge failed and employee reported for duty. Meanwhile the management struck off the name of the employee from the muster rolls—Held, the absence of employee was justifiable and the management, if only had conducted an enquiry would not have terminated the services orally as the employee would be able to explain satisfactorily his absence. 1977 Labour and Industrial Cases in which it has been held “striking off the name of the workman from the rolls by the management is termination of his services as retrenchment within the meaning of section 2(00) of the Act. The provision of section 25 F(a), the proviso apart, and (b) are mandatory and any order of retrenchment in violation of these two pre-emptory conditions precedent is invalid. In 1978 II LLN page 164 it is held as follows :—

The word “presumed” implies that the presumption raised can be dislodged by showing that there was some satisfactory reason for absence from duty without leave and, therefore, the employee did not intend to leave the service. If the intention of the standing order were to raise a conclusive presumption of termination of employment at the instance of the employee on his absents from duty without leave for more than thirty days, the word “deemed” would have been used in place of the word “presumed”. On the language of the standing orders as it is, the absence from duty without leave exceeding thirty days merely raises a presumption that the employee left the service of his own accord. But before action is taken on the basis of the presumptive inference that the employee has left the service and his employment has come to an end, the employee must be given opportunity to explain his absence. If the employee shows satisfactory reasons for his absence without leave, the presumption would be destroyed and it would not be possible for the employer to take action against the employee on the basis of the presumption.

6. The representative for the workman has greatly stressed upon the latest ruling of the Supreme Court 1980 Labour Law Reporter page 73 in which their Lordships of the Supreme Court have set the controversy of Hariparsad Shivshankar Shukla V. A.D. Divikar and State Bank of India V. Sundaramoney at rest and confirmed earlier decision holding that "striking off the name of the workman from the rolls by the management was termination of the services which was retrenchment within the meaning of section 2(00) of the Industrial Disputes Act. Their Lordships have over-ruled the decision of Kerala High Court in L. Robert Doosuja V. Executive Engineer, Southern Railway and another (1967 1 LLJ 546).

7. Ex-W-1 is the letter from the management to the workman concerned at his jail address in reply to his letter dated 12th May, 1977. Ex. W-2 is also a letter from the management to the concerned workman C/o Superintendent Jail, Gurgaon, dated March 30, 1977 in reply to letter dated 23rd March, 1977. Ex. WW-3/A is the certified copy of the judgement dated 1st September, 1977 of Additional Sessions Judge, Gurgaon. According to this judgement there were 16 accused persons in the case, concerned workman being one of them. Ex. W-S is the demand notice filed by the workman to the management. Ex. W-7 is the report of the Conciliation Officer sent to the Labour Commissioner. Ex. W-7 is the letter written by the workman to the Labour Officer. Ex. W-8 is the letter written by the management to the workman concerned. Ex. M-2 is the card of the workman produced by the management showing his attendance and departure. Ex. MX-1 is request of the workman to the management for payment of his Security deposit from the jail. Ex. MX-2 is the letter written by the workman to the management for seeking help for his family from the jail.

8. Relying upon the documents it is clear that it was within the knowledge of the management that the workman was confined to Gurgaon Jail. Because they have exchanged letters from that place through the Superintendent of Jail. Regarding abandonment of service by the workman it is to be stated that abandonment is always a question of intention and normally such an intention cannot be attributed to an employee without giving him opportunity to explain his position. In the circumstances of the case the workman attended the factory on his last day of work i.e., 30th September, 1976. He was confined to Jail and was not at liberty to join his duties. The representative for the management have referred to Standing Order No. 17 which relates to privilege and earned leave and over staying beyond the period of sanctioned leave. Accordingly decide issue No. 1 in favour of the workman and against the management.

Issue No. 2.—There is nothing to show that the provisions of section 25(f) (a) and (b) were complied by the management in this case. The provision of section 25 (a), the proviso apart and (b) are mandatory and any order of retrenchment in violation of preemptory conditions precedent is invalid. Therefore the termination of services of the workman was neither justified, nor in order. This issue is decided accordingly.

9. While answering the reference, I give my award that the workman did not abandon his services rather on the other hand the management terminated the services of the workman concerned unjustifiably. Therefore, the workman Shri Ayodhya Parsad is entitled to reinstatement with continuity of service and with full back wages. However, he will not be entitled for the wages of the period of his enforced absence in Jail.

The 26th May, 1980.

M.C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.

No. 495, dated the 28th May, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

M.C. BHARDWAJ,

Presiding Officer,

Industrial Tribunal, Haryana, Faridabad.